

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESale PRICE
LITIGATION

MDL NO. 1456

CIVIL ACTION NO. 01-CV-12257-PBS

THIS DOCUMENT RELATES TO:

Judge Patti B. Saris

State of Montana v. Abbott Laboratories, Inc.
D. Mont. Cause No. 02-09-H-DVM;
State of Nevada v. American Home Products
Corp., D. Nev. Cause No. 02-0202-ECR

**OBJECTION OF FUJISAWA HEALTHCARE, INC. AND FUJISAWA
USA, INC. TO PLAINTIFFS' JOINT MOTION TO COMPEL DISCOVERY
AND NOTICE OF FAILURE TO SERVE**

Defendants Fujisawa Healthcare, Inc. and Fujisawa USA, Inc. (collectively referred to as "Fujisawa") hereby¹ object to the discovery served on them in the above-captioned matters because they have not been served with process as required by Federal Rule of Civil Procedure ("Rule") 4.

Fujisawa was added for the first time as a party to the above-captioned cases when Plaintiffs filed amended complaints on August 1, 2003. Neither Fujisawa entity has been served with process in these cases, although the Rules require that, in such instances, service be perfected pursuant to Rule 4 before the Court can exercise personal jurisdiction over the defendants. *See* 4B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1146 (3d ed. 2002) ("[i]f the pleading seeks to add a new party. . . the pleading also must be

¹ Counsel for Fujisawa appears in the above-captioned matters for the limited purpose of informing the Court of Plaintiffs' failure to serve process and the effects of such failure on proceedings before it. Fujisawa reserves the right to move to dismiss the actions should service pursuant to Rule 4 or other appropriate arrangements for service not be made. *See Fadum Enterprises, Inc. v. Liakos*, 694 F.Supp. 973, 976 (D.Mass. 1988) (right to challenge personal jurisdiction waived only if general appearance made, or if unraised in responsive pleading or motion responding to complaint).


served on the new party to the action together with a summons pursuant to the procedures in Rule 4.”); *Ransom v. Brennan*, 437 F.2d 513 (5th Cir. 1971), *cert. denied*, 403 U.S. 904 (1971)(in order for a plaintiff to add a new defendant, “the pleading must be served in accordance with Rule 4 in order [for] the court to obtain personal jurisdiction over the new party.”)

Insofar as service has not yet been made on Fujisawa, Plaintiffs cannot serve discovery upon either entity, much less move to compel them to respond to discovery.

Respectfully Submitted,


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Attorneys for Defendants Fujisawa
USA, Inc. and Fujisawa Healthcare,
Inc.

Dated: September 15, 2003

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the Objection of Fujisawa Healthcare, Inc. and Fujisawa USA, Inc. To Plaintiffs' Joint Motion to Compel Discovery and Notice of Failure to Serve was delivered to all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2 by sending, on September 15, 2003, a copy to Verilaw Technologies for posting and notification to all parties.

/s/ Andrew L. Hurst

Andrew L. Hurst

BINGHAM McCUTCHEN

S. Elaine McChesney
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September 15, 2003

BY HAND

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Clerk of Court
United States District Court
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Boston, Massachusetts 02110

Re: Citizens for Consumer Justice, et al. v. Abbott Laboratories, Inc., et. al, Civil Action No. 01-CV-12257-PBS

Dear Sir or Madam:

Enclosed for filing in the above-referenced matter please find Objection of Fujisawa Healthcare, Inc. and Fujisawa USA, Inc. to Plaintiffs' Joint Motion to Compel Discovery and Notice of Failure to Serve.

Please date stamp the enclosed copy and return it to our messenger as proof of filing.

Thank you for your attention to this matter.

Very truly yours,


S. Elaine McChesney

SEM/cm
Enclosure